

REMARKS

Claims 1-31 are pending. By the present amendment, Claims 32-53 are newly added and Claims 1, 3, 8, 9 and 24 are amended, thereby leaving Claims 2, 4, 5, 7, 10, 11, 14, 15, 25 and 26 unchanged. Claims 6, 12, 13, 16-23 and 27-31 remain withdrawn from consideration, but should be considered upon allowance of a generic independent claim.

Objection to the Priority Claim

The Examiner objected to the priority claim. Applicants have amended the specification to include the priority claim made when the application was filed and, therefore, request withdrawal of the objection to the priority claim.

Rejections under 35 U.S.C. § 112

Claims 1-5, 7-11, 14, 15 and 24-26 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. With respect to Claims 1-5, 7-11, 14, 15, 24 and 25, the Examiner contends that it is not clear what is meant by the rib extending “across” the chamber. With respect to Claim 9, the Examiner notes that Claim 9 recites that the rib “extends one-half of the radius”, while dependent Claim 10 recites that the rib extends a distance “equal to the radius”.

Applicants have amended Claims 1, 9 and 24 in a manner similar to that suggested by the Examiner. In view of the foregoing, Applicants contend that the rejections under 35 U.S.C. § 112, second paragraph, have been overcome. Accordingly, Applicants request reconsideration of these rejections.

Rejections under 35 U.S.C. § 102

Claims 1-3, 5, 7-11, 14, 24 and 26 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,104,232 (“Lennox”). Reconsideration of the rejection is requested.

Claim 1 defines a vacuum tumbler for marinating food products within a liquid, the vacuum tumbler including a container having an interior wall, said interior wall defining a chamber for containing the liquid, the chamber defining a longitudinal axis extending therethrough, a rib extending inwardly from said interior wall generally toward the longitudinal axis at least one-quarter of the distance across said chamber, a drive for moving the container so that the rib brings the food products into and out of contact with the liquid, and a vacuum source for creating a partial vacuum within said chamber.

Lennox does not teach or suggest, among other things, a rib extending inwardly from said interior wall generally toward the longitudinal axis at least one-quarter of the distance across said chamber. Rather, Lennox discloses a vacuum tumble mixer 10 including a drum 11 having vanes 26, which extend helically around the drum 11 and extend considerably less than one-quarter of the distance across the drum 11.

For these and other reasons, Lennox does not teach or suggest all the claim limitations of independent Claim 1. Accordingly, independent Claim 1 is allowable. Claims 2-15 and 32 depend from independent Claim 1 and are allowable for the same and other reasons.

Claim 24 defines a device for marinating food products within a liquid, the device including a container having an interior wall defining a chamber for containing the liquid, a shelf extending away from the interior wall and through the chamber across at least a quarter of the distance across said chamber in the direction the shelf extends away from the interior wall, a drive for maneuvering said shelf to bring the food products into and out of contact with the liquid, and a vacuum source for creating a partial vacuum within said chamber.

Lennox does not teach or suggest, among other things, a shelf extending away from the interior wall and through the chamber across at least a quarter of the distance across said chamber in the direction the shelf extends away from the interior wall. Rather, as discussed earlier, Lennox discloses a drum 11 having vanes 26, which extend considerably less than one-quarter of the distance across the drum 11.

For these and other reasons, Lennox does not teach or suggest all the claim limitations of independent Claim 24. Accordingly, independent Claim 24 is allowable. Claims 25-31 and 33-45 depend from independent Claim 24 and are allowable for the same and other reasons.

Rejections under 35 U.S.C. § 103

Claims 1-5, 7-8, 14, 15 and 24-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,040,013 ("Karales") in view of U.S. Patent No. 3,134,203 ("Roberts"). Reconsideration of the rejections is requested.

For establishing a *prima facie* case of obviousness, three basic criteria must be met. *M.P.E.P.* § 2143.

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior

art reference (or references when combined) must teach or suggest all the claim limitations.

Id. “All words in a claim must be considered in judging the patentability of that claim against the prior art. [Citation omitted]” *M.P.E.P.* § 2143.03. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure. *M.P.E.P.* § 2143. The mere fact that the references can be combined does not render the resultant combination obvious unless the prior art suggests the desirability of the combination. *M.P.E.P.* § 2143.01. See also *M.P.E.P.* § 2142 (“To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references. [Citations omitted].”) “Determination of obviousness cannot be based on the hindsight combination of components selectively culled from the prior art to fit the parameters of the patented invention.” *ATD Corp. v. Lydall, Inc.*, 159 F. 3d 534, 546 (Fed. Cir. 1998).

Claim 1 defines a vacuum tumbler for marinating food products within a liquid, the vacuum tumbler including a container having an interior wall, said interior wall defining a chamber for containing the liquid, the chamber defining a longitudinal axis extending therethrough, a rib extending inwardly from said interior wall generally toward the longitudinal axis at least one-quarter of the distance across said chamber, a drive for moving the container so that the rib brings the food products into and out of contact with the liquid, and a vacuum source for creating a partial vacuum within said chamber. The Examiner’s proposed combination for Claim 1 fails to establish a *prima facie* case of obviousness.

Karales does not teach or suggest a rib extending inwardly from said interior wall generally toward the longitudinal axis at least one-quarter of the distance across said chamber. Rather, Karales merely discloses a rotatable drum 14 having a central tubular axle 34 which is welded to the end walls 22, 24 of the drum 14 and extends through the drum 14. Karales specifies that “the absence of baffles on the smooth interior walls of the drum 14 provides improved marinade pick-up in less time, while simultaneously eliminating mechanical damage to the meat or other food pieces” and that “[p]ieces of meat, instead of being lifted and dropped by baffles onto other pieces of meat or the sharp edges of other baffles, simply roll over each other in a gentle kneading action.” Column 4, lines 15-22. Karales therefore teaches away from the modification suggested by the Examiner.

Roberts does not cure the deficiencies of Karales. Specifically, Roberts does not provide any reason whatsoever to go against the clear teaching of Karales and add a rib or ribs to the inside of the Karales tumbler. In fact, Roberts does not have anything to do with marinating food products. Roberts discloses a rock tumbler. One skilled in the art of marinating food products would not be motivated by Roberts to ignore the teachings of Karales and modify the Karales tumbler as suggested by the Examiner.

The teachings or suggestion to make the claimed combination must be found in the prior art, and must not be based on Applicants' disclosure.

Accordingly, Claim 1 is allowable. Claims 2-15 and 32 depend from independent Claim 1 and are allowable for the same and other reasons.

Claim 24 defines a device for marinating food products within a liquid, the device including a container having an interior wall defining a chamber for containing the liquid, a shelf extending away from the interior wall and through the chamber across at least a quarter of the distance across said chamber in the direction the shelf extends away from the interior wall, a drive for maneuvering said shelf to bring the food products into and out of contact with the liquid, and a vacuum source for creating a partial vacuum within said chamber. The Examiner's proposed combination for Claim 24 fails to establish a *prima facie* case of obviousness.

Karales does not teach or suggest a shelf extending away from the interior wall and through the chamber across at least a quarter of the distance across said chamber in the direction the shelf extends away from the interior wall. Rather, as discussed above, Karales teaches away from the use of baffles to lift and drop meat because such baffles may damage the meat. Karales therefore teaches away from the modification suggested by the Examiner.

As explained above, Roberts does not cure the deficiencies of Karales.

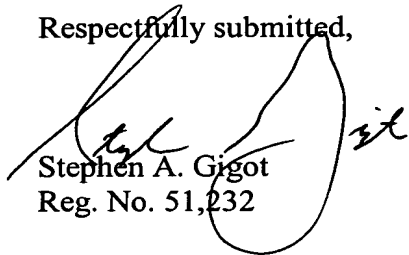
For these and other reasons, Roberts and Karales, alone or in combination, do not teach or suggest the subject matter defined by independent Claim 24. Accordingly, Claim 24 is allowable. Claims 25-31 and 33-45 depend from independent Claim 24 and are allowable for the same and other reasons.

Claims 32-53 have been newly added and are believe to be allowable over the prior art.

CONCLUSION

In view of the foregoing, entry of the present Amendment and allowance of Claims 1-5, 7-11, 14, 15, 24-26 and 32-53 are requested. In addition, withdrawn Claims 6, 12, 13, 16-23 and 27-31 should be considered upon allowance of a generic independent claim. The undersigned is available for telephone consultation during normal business hours.

Respectfully submitted,



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